

Remarks

In the Office Action mailed July 27, 2005, claims 27-32, 37, 38, and 50 were objected to for depending from a rejected base claim, but were indicated as being allowable if rewritten in independent form.

Claims 26, 33-36, and 39-49 were given a final rejection under 35 U.S.C. § 102(b) as being anticipated by the disclosure of the U.S. Patent of Micallef No. 4,138,039. Reconsideration of this rejection and allowance of the rejected claims is requested.

It is a fundamental principle of patent law that an anticipation rejection requires identify of invention.

For a prior-art reference to anticipate, every element of the claimed invention must be identically shown in a single reference. In Re Bond, 910 F.2d 831, 15 U.S.P.Q. 2d 1566, 1567, 1568 (Fed. Cir. 1990).

A party asserting that a patent claim is anticipated under 35 U.S.C. § 102 "must demonstrate . . . identity of invention." Minnesota Mining and Manufacturing Co. v. Johnson & Johnson Orthopedics, Inc., 976 F.2d 1558, 24 U.S.P.Q. 2d 1321, 1326 (Fed. Cir. 1992).

"[A]ny degree of physical difference, however slight, invalidates claims of anticipation." Ultradent Products Inc. v. Life-Like Cosmetics Inc., 39 U.S.P.Q. 2d 1969 (1980) (Utah 1996).

Of the rejected claims, claims 26, 36 and 43 are independent claims. Each of these claims recites, among other novel features of the invention, "a pump chamber having an interior volume and a cylindrical wall surrounding the interior volume". In contrast, the Micallef reference discloses a pump 10 having a pump chamber 18 that is surrounded by a diaphragm 24 and a base 22. Together, the diaphragm 24 and the base 22 define a sphere. The pump chamber 18 does not have an interior volume that is surrounded by a cylindrical wall as required by claims 26, 36, and 43. Because the

Micallef reference does not disclose a pump chamber having an interior volume surrounded by a cylindrical wall, the reference does not identically disclose the subject matter of claims 26, 36, and 43, and therefore does not anticipate these claims. For this reason, the rejection of the claim should be withdrawn and the claims allowed. If the rejection of the claims is maintained, it is requested that the cylindrical wall surrounding the interior volume 18 of the Micallef pump chamber 10 be identified in the Micallef reference.

Dependent claim 33 recites, among other novel features of the invention, "a flexible, resilient bulb connecting the center tube to the pump chamber cylindrical wall and enclosing the interior volume of the pump chamber". This subject matter of the invention is not identified in the rejection of claim 33. Because the Micallef reference does not identically disclose the subject matter of claim 33, the reference does not anticipate that subject matter. The rejection of claim 33 should therefore be withdrawn and the claim allowed. If the rejection of claim 33 is maintained, it is requested that the flexible, resilient bulb connecting the center tube to the cylindrical wall of the pump chamber be identified in the reference.

Dependent claim 34 recites "the pump chamber liquid discharge passage and the pump chamber cylindrical wall being coaxial". The rejection of the claim identifies the plunger passage 20 in the Micallef reference as the claimed discharge passage, but does not identify any cylindrical wall that is coaxial with the discharge passage as recited in claim 34. Because the Micallef reference does not identically disclose the subject matter of claim 34, the rejection of the claim should be withdrawn and the claim allowed. If the rejection of the claim is maintained, it is requested that the cylindrical

... wall that is coaxial with the liquid discharge passage be identified in the Micallef reference.

Dependent claim 35 recites, among other novel features of the invention, "a tubular input valve integrally formed with the bulb; and, a tubular output valve integrally formed with the bulb". The rejection of the claims interprets the diaphragm 24 as the claimed input valve. However, the diaphragm 24 is a part of the pump 10 and is not an input valve. The check valve 26 functions as an input valve and is a ball valve. The interpretation of the diaphragm 24 as an input valve is incorrect. In view of this, the rejection of claim 35 is made in error and should be withdrawn and the claim allowed. If the rejection of claim 35 is maintained, it is requested that an explanation be provided as to how the diaphragm 24 is being interpreted as an input valve.

As explained above, dependent claim 36 includes, among other novel features of the invention, "a pump chamber having an interior volume and a cylindrical wall surrounding the interior volume". As pointed out above, the Micallef reference fails to identically disclose this subject matter of the invention. Furthermore, independent claim 36 also includes the subject matter of "the pump plunger having a center tube with a liquid discharge passage extending through the center tube and communicating with the interior volume of the pump chamber, and the pump plunger having a top wall and a pair of side walls that surround the center tube with the entire center tube being spaced inwardly and separated from each of the pump plunger top wall and side walls". The rejection of claim 36 interprets the stem extension 42 of the Micallef reference as the claimed center tube, but fails to identify the top wall and pair of side walls that surround the center tube with the entire center tube being spaced inwardly and separated from

each of the pump plunger top wall and side walls recited in claim 36. Because the Micallef reference fails to identically disclose this subject of the invention recited in claim 36, the rejection of the claim is made in error and should be withdrawn and the claim allowed. If the rejection is maintained, it is requested that the pump plunger top wall and pair of side walls that surround the center tube with the entire center tube being spaced inwardly and separated from each of the pump plunger top wall and side walls be identified in the Micallef reference.

Dependent claim 39 recites "a flexible, resilient bulb connecting the center tube to the pump chamber cylindrical wall and enclosing the interior volume of the pump chamber." The Micallef reference discloses a resilient diaphragm 24 that is connected to a base 22 of the pump 10 to enclose the pump chamber 18, but neither the diaphragm 24 nor base 22 are cylindrical. Therefore, the Micallef reference does not identically disclose the subject matter of claim 39, and the rejection of the claim is made in error and should be withdrawn. If the rejection is maintained, it is requested that the pump chamber cylindrical wall connected to the resilient bulb be identified in the Micallef reference.

Dependent claim 40 recites "a tubular input valve integrally formed with the bulb". As pointed out earlier, the Micallef reference discloses a check valve 26 that is separate from the pump chamber 10 and that functions as an input valve. Because the Micallef reference does not identically disclose the subject matter of claim 40, it does not anticipate that subject matter. Therefore, the rejection of claim 40 is made in error and should be withdrawn and the claim allowed. If the rejection is maintained, it is

requested that the input valve that is integral with the bulb be identified in the Micallef reference.

Dependent claim 41 recites that the pump plunger liquid discharge passage, the tubular input valve, the tubular output valve, and the pump chamber cylindrical wall are all coaxial. As set forth above, the rejection of the claim in view of the Micallef reference fails to identify the tubular input valve and the pump chamber cylindrical wall recited in claim 41. Because the Micallef reference does not identically disclose these features of the invention, the reference does not anticipate claim 1 and the rejection of the claim is made in error and should be withdrawn and the claim allowed. If the rejection is maintained, it is requested that the coaxial discharge passage, input valve, output valve and pump chamber cylindrical wall all be identified.

As explained above, independent claim 43 recites "a pump chamber having an interior volume and a cylindrical wall surrounding the interior volume." Because the Micallef reference does not disclose the claimed cylindrical walls surrounding the interior volume of the pump chamber, the reference does not anticipate claim 43 and the rejection of the claim is made in error and should be withdrawn and the claim allowed. Furthermore, claim 43 recites "a flexible, resilient bulb connecting the pump plunger to the pump chamber cylindrical wall". As explained earlier, the Micallef reference does not disclose this subject matter of the invention. The Micallef reference discloses a flexible diaphragm 24 connected to a pump base 22, but not to a pump chamber cylindrical wall as required by the language of the claim. The Micallef reference therefore fails to anticipate the subject matter of claim 43, and the rejection of the claim is made in error and should be withdrawn and the claim allowed. If the

rejection is maintained, it is requested that the cylindrical wall connected to the plunger by the bulb be identified in the Micallef reference.

Dependent claim 44 also recites the tubular input valve overlaying the input port. As explained above, the Micallef reference discloses a ball valve 26 that functions as the input valve. Because the Micallef reference does not identically disclose the subject matter of claim 44, the rejection of the claim is made in error and should be withdrawn and the claim allowed. If the rejection is maintained, it is requested that the tubular input valve be identified in the Micallef reference.

Dependent claim 46 requires, among other novel features, "the liquid discharge orifice and the pump chamber cylindrical wall being coaxial". As explained above, the Micallef reference fails to identically disclose a pump chamber cylindrical wall. The Micallef reference therefore fails to anticipate the subject matter of claim 46, and the rejection of the claim is made in error and should be withdrawn and the claim allowed. If the rejection is maintained, it is requested that the cylindrical wall of the pump chamber be identified in the Micallef reference.

Dependent claim 47 recites "the bulb having an integral vent valve". The rejection of the claim states that the Micallef reference discloses a vent valve, but does not identify the valve in the Micallef reference. The Micallef reference fails to identically show a bulb having an integral vent valve. If the rejection of the claim is to be maintained, it is requested that the vent valve be identified in the Micallef reference.

Dependent claim 48 also recites the bulb having an integral vent valve. As set forth above, the Micallef reference fails to identify the claimed vent valve. If the

rejection of claim 48 is to be maintained, it is requested that the vent valve be identified in the Micallef reference.

Dependent claim 49 recites "the pump plunger having a top wall and a pair of side walls that surround the bulb." The rejection of the claim fails to identify the top wall and pair of side walls that surround the bulb in the Micallef reference. The Micallef reference fails to identify the subject matter of claim 49, and therefore does not anticipate that subject matter. The rejection of the claim is therefore made in error and should be withdrawn and the claim allowed. If the rejection is maintained, it is requested that the top wall and the pair of side walls surrounding the bulb be identified in the reference.

It is respectfully submitted that the application is in condition for allowance. If the final rejection of the claims is to be maintained, it is requested that the specifically claimed subject matter of the invention set forth above be identified in the Micallef reference so that the final rejection can be appealed.

Respectfully submitted,

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